

Assembly Bill No. 2742

CHAPTER 64

An act to amend Section 11302 of the Business and Professions Code, to amend Section 1798.24 of the Civil Code, to amend Sections 202, 1800, 2602, 16901, and 31118 of the Corporations Code, and to amend Sections 300, 459, 4000, 4970, 4973, 4995, 14254.5, 14256, 14356, 22332, 22337, 22340.1, 30005, and 50003 of, and to add Section 1001 to, the Financial Code, relating to business.

[Approved by Governor June 25, 2014. Filed with
Secretary of State June 25, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2742, Committee on Banking and Finance. Business: corporations and financial services.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, including the licensure and regulation of real estate appraisers by the Bureau of Real Estate Appraisers. Existing law provides for the organization and governance of specified business entities, including corporations and partnerships. Existing law establishes the Department of Business Oversight, headed by the Commissioner of Business Oversight, and provides that the department is in charge of the execution of specified laws relating to various financial institutions and financial services, including banks, trust companies, credit unions, finance lenders, and residential mortgage lenders.

This bill would make various technical changes to these and other provisions of law, including updating cross-references and definitions in accordance with changes made to the law pursuant to Chapter 243 of the Statutes of 2011 and updating cross-references to certain federal laws and federal regulatory entities.

The people of the State of California do enact as follows:

SECTION 1. Section 11302 of the Business and Professions Code is amended to read:

11302. For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

- (a) "Department" means the Department of Consumer Affairs.
- (b) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property

as of a specific date, supported by the presentation and analysis of relevant market information.

The term “appraisal” does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related.

(c) “Appraisal Foundation” means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(d) (1) “Appraisal management company” means any person or entity that satisfies all of the following conditions:

(A) Maintains an approved list or lists, containing 11 or more independent contractor appraisers licensed or certified pursuant to this part, or employs 11 or more appraisers licensed or certified pursuant to this part.

(B) Receives requests for appraisals from one or more clients.

(C) For a fee paid by one or more of its clients, delegates appraisal assignments for completion by its independent contractor or employee appraisers.

(2) “Appraisal management company” does not include any of the following, when that person or entity directly contracts with an independent appraiser:

(A) Any bank, credit union, trust company, savings and loan association, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(B) Any finance lender or finance broker licensed pursuant to Division 9 (commencing with Section 22000) of the Financial Code, when acting under the authority of that license.

(C) Any residential mortgage lender or residential mortgage servicer licensed pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(D) Any real estate broker licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, when acting under the authority of that license.

(3) “Appraisal management company” does not include any person licensed to practice law in this state who is working with or on behalf of a client of that person in connection with one or more appraisals for that client.

(e) “Appraisal Subcommittee” means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(f) “Controlling person” means one or more of the following:

(1) An officer or director of an appraisal management company, or an individual who holds a 10 percent or greater ownership interest in an appraisal management company.

(2) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals.

(3) An individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company.

(g) “Director” or “chief” means the Chief of the Bureau of Real Estate Appraisers.

(h) “Federal financial institutions regulatory agency” means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Federal Home Loan Bank System, National Credit Union Administration, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(i) “Federally related real estate appraisal activity” means the act or process of making or performing an appraisal on real estate or real property in a federally related transaction and preparing an appraisal as a result of that activity.

(j) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(k) “License” means any license, certificate, permit, registration, or other means issued by the bureau authorizing the person to whom it is issued to act pursuant to this part within this state.

(l) “Licensure” means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(m) “Office” or “bureau” means the Bureau of Real Estate Appraisers.

(n) “Registration” means the procedures and requirements with which a person or entity shall comply in order to qualify to conduct business as an appraisal management company.

(o) “State licensed real estate appraiser” is a person who is issued and holds a current valid license under this part.

(p) “Uniform Standards of Professional Appraisal Practice” are the standards of professional appraisal practice established by the Appraisal Foundation.

(q) “Course provider” means a person or entity that provides educational courses related to professional appraisal practice.

SEC. 2. Section 1798.24 of the Civil Code is amended to read:

1798.24. An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

- (a) To the individual to whom the information pertains.
- (b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.
- (c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.
- (d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.
- (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.
- (f) To a governmental entity when required by state or federal law.
- (g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).
- (h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.
- (i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.
- (j) To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.
- (k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably

attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(l) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) (1) To the University of California, a nonprofit educational institution, or, in the case of education-related data, another nonprofit entity, conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) or an institutional review board, as authorized in paragraphs (4) and (5). The approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the

personal information for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS or institutional review board shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision are satisfied.

(5) Pursuant to paragraph (4), the CPHS shall enter into a written agreement with the institutional review board established pursuant to Section 49079.5 of the Education Code. The agreement shall authorize, commencing July 1, 2010, or the date upon which the written agreement is executed, whichever is later, that board to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision and the act specified in paragraph (1) of subdivision (a) of Section 49079.5 are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 450, 452, 8009, or 18396 of the Financial Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

SEC. 3. Section 202 of the Corporations Code is amended to read:

202. The articles of incorporation shall set forth:

(a) The name of the corporation; provided, however, that in order for the corporation to be subject to the provisions of this division applicable to a close corporation (Section 158), the name of the corporation must contain the word “corporation,” “incorporated,” or “limited” or an abbreviation of one of such words.

(b) (1) The applicable one of the following statements:

(A) The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code; or

(B) The purpose of the corporation is to engage in the profession of _____ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities (other than the banking or trust company business) not prohibited to a corporation engaging in such profession by applicable laws and regulations.

(2) In case the corporation is a corporation subject to the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code), the articles shall set forth a statement of purpose which is prescribed in the applicable provision of the Banking Law.

(3) In case the corporation is a corporation subject to the Insurance Code as an insurer, the articles shall additionally state that the business of the corporation is to be an insurer.

(4) If the corporation is intended to be a “professional corporation” within the meaning of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3), the articles shall additionally contain the statement required by Section 13404.

The articles shall not set forth any further or additional statement with respect to the purposes or powers of the corporation, except by way of limitation or except as expressly required by any law of this state other than this division or any federal or other statute or regulation (including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes).

(c) The name and street address in this state of the corporation’s initial agent for service of process in accordance with subdivision (b) of Section 1502.

(d) The initial street address of the corporation.

(e) The initial mailing address of the corporation, if different from the initial street address.

(f) If the corporation is authorized to issue only one class of shares, the total number of shares which the corporation is authorized to issue.

(g) If the corporation is authorized to issue more than one class of shares, or if any class of shares is to have two or more series:

(1) The total number of shares of each class the corporation is authorized to issue, and the total number of shares of each series which the corporation

is authorized to issue or that the board is authorized to fix the number of shares of any such series;

(2) The designation of each class, and the designation of each series or that the board may determine the designation of any such series; and

(3) The rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes or series of shares or the holders thereof, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares. As to any series the number of shares of which is authorized to be fixed by the board, the articles may also authorize the board, within the limits and restrictions stated therein or stated in any resolution or resolutions of the board originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

SEC. 4. Section 1800 of the Corporations Code is amended to read:

1800. (a) A verified complaint for involuntary dissolution of a corporation on any one or more of the grounds specified in subdivision (b) may be filed in the superior court of the proper county by any of the following persons:

(1) One-half or more of the directors in office.

(2) A shareholder or shareholders who hold shares representing not less than $33\frac{1}{3}$ percent of (i) the total number of outstanding shares (assuming conversion of any preferred shares convertible into common shares) or (ii) the outstanding common shares or (iii) the equity of the corporation, exclusive in each case of shares owned by persons who have personally participated in any of the transactions enumerated in paragraph (4) of subdivision (b), or any shareholder or shareholders of a close corporation.

(3) Any shareholder if the ground for dissolution is that the period for which the corporation was formed has terminated without extension thereof.

(4) Any other person expressly authorized to do so in the articles.

(b) The grounds for involuntary dissolution are that:

(1) The corporation has abandoned its business for more than one year.

(2) The corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, and the holders of the voting shares of the corporation are so divided into factions that they cannot elect a board consisting of an uneven number.

(3) There is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business can no longer be conducted with advantage to its shareholders or the shareholders have failed at two consecutive annual meetings at which all voting power was exercised,

to elect successors to directors whose terms have expired or would have expired upon election of their successors.

(4) Those in control of the corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward any shareholders or its property is being misapplied or wasted by its directors or officers.

(5) In the case of any corporation with 35 or fewer shareholders (determined as provided in Section 605), liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder or shareholders.

(6) The period for which the corporation was formed has terminated without extension of such period.

(c) At any time prior to the trial of the action any shareholder or creditor may intervene therein.

(d) This section does not apply to any corporation subject to the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code), the Public Utilities Act (Part 1 (commencing with 201) of Division 1 of the Public Utilities Code), the Savings Association Law (Division 2 (commencing with Section 5000) of the Financial Code) or Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(e) For the purposes of this section, “shareholder” includes a beneficial owner of shares who has entered into an agreement under Section 300 or 706.

SEC. 5. Section 2602 of the Corporations Code is amended to read:

2602. The articles of incorporation shall set forth:

(a) The name of the flexible purpose corporation that shall contain the words “flexible purpose corporation” or an abbreviation of those words.

(b) (1) Either of the following statements, as applicable:

(A) “The purpose of this flexible purpose corporation is to engage in any lawful act or activity for which a flexible purpose corporation may be organized under Division 1.5 of the California Corporations Code, other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code, for the benefit of the long-term and the short-term interests of the flexible purpose corporation and its shareholders and in furtherance of the following enumerated purposes ____.”

(B) “The purpose of this flexible purpose corporation is to engage in the profession of ____ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities, other than the banking or trust company business, not prohibited to a flexible purpose corporation engaging in that profession by applicable laws and regulations, for the benefit of the long-term and the short-term interests of the flexible purpose corporation and its shareholders.”

(2) A statement that a purpose of the flexible purpose corporation is to engage in one or more of the following purposes, in addition to the purpose stated pursuant to paragraph (1):

(A) One or more charitable or public purpose activities that a nonprofit public benefit corporation is authorized to carry out.

(B) The purpose of promoting positive short-term or long-term effects of, or minimizing adverse short-term or long-term effects of, the flexible purpose corporation's activities upon any of the following:

(i) The flexible purpose corporation's employees, suppliers, customers, and creditors.

(ii) The community and society.

(iii) The environment.

(3) A statement that the flexible purpose corporation is organized as a flexible purpose corporation under the Corporate Flexibility Act of 2011.

(4) If the flexible purpose corporation is a flexible purpose corporation subject to the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code), the articles shall set forth a statement of purpose that is prescribed by the applicable provision of the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code).

(5) If the flexible purpose corporation is a flexible purpose corporation subject to the Insurance Code as an insurer, the articles shall additionally state that the business of the flexible purpose corporation is to be an insurer.

(6) If the flexible purpose corporation is intended to be a professional corporation within the meaning of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3), the articles shall additionally contain the statement required by Section 13404. The articles shall not set forth any further or additional statement with respect to the purposes or powers of the flexible purpose corporation, except by way of limitation or except as expressly required by any law of this state, other than this division, or any federal or other statute or regulation, including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes.

(7) If the flexible purpose corporation is a close flexible purpose corporation, a statement as required by subdivision (a) of Section 158.

(c) The name and street address in this state of the flexible purpose corporation's initial agent for service of process in accordance with subdivision (b) of Section 1502.

(d) The initial street address of the corporation.

(e) The initial mailing address of the corporation, if different from the initial street address.

(f) If the flexible purpose corporation is authorized to issue only one class of shares, the total number of shares that the flexible purpose corporation is authorized to issue.

(g) If the flexible purpose corporation is authorized to issue more than one class of shares, or if any class of shares is to have two or more series, the articles shall state:

(1) The total number of shares of each class that the flexible purpose corporation is authorized to issue and the total number of shares of each series that the flexible purpose corporation is authorized to issue or that the board is authorized to fix the number of shares of any such series.

(2) The designation of each class and the designation of each series or that the board may determine the designation of any such series.

(3) The rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes or series of shares or the holders thereof, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares. As to any series the number of shares of which is authorized to be fixed by the board, the articles may also authorize the board, within the limits and restrictions stated in the article or in any resolution or resolutions of the board originally fixing the number of shares constituting any series, to increase or decrease, but not below the number of shares of such series then outstanding, the number of shares of any series subsequent to the issue of shares of that series. If the number of shares of any series shall be so decreased, the shares constituting that decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of that series.

SEC. 6. Section 16901 of the Corporations Code is amended to read:

16901. In this article, the following terms have the following meanings:

(1) “Constituent other business entity” means any other business entity that is merged with or into one or more partnerships and includes a surviving other business entity.

(2) “Constituent partnership” means a partnership that is merged with or into one or more other partnerships or other business entities and includes a surviving partnership.

(3) “Disappearing other business entity” means a constituent other business entity that is not the surviving other business entity.

(4) “Disappearing partnership” means a constituent partnership that is not the surviving partnership.

(5) “Domestic” means organized under the laws of this state when used in relation to any partnership, other business entity, or person (other than an individual).

(6) “Foreign other business entity” means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(7) “Foreign partnership” means a partnership formed under the laws of any state other than this state or under the laws of a foreign country.

(8) “General partner” means a partner in a partnership and a general partner in a limited partnership.

(9) “Limited liability company” means a limited liability company created under Title 2.6 (commencing with Section 17701.01), or comparable law of another jurisdiction.

(10) “Limited partner” means a limited partner in a limited partnership.

(11) “Limited partnership” means a limited partnership created under Chapter 3 (commencing with Section 15611) or Chapter 5.5 (commencing with Section 15900), predecessor law, or comparable law of another jurisdiction.

(12) “Other business entity” means a limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) “Partner” includes both a general partner and a limited partner.

(14) “Surviving other business entity” means an other business entity into which one or more partnerships are merged.

(15) “Surviving partnership” means a partnership into which one or more other partnerships or other business entities are merged.

SEC. 7. Section 31118 of the Corporations Code is amended to read:

31118. The commissioner may vacate or modify a stop order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

SEC. 8. Section 300 of the Financial Code is amended to read:

300. (a) In this section:

(1) “Business and industrial development corporation” means a corporation licensed under Division 15 (commencing with Section 31000).

(2) “Payment instrument” has the same meaning as set forth in Section 2003.

(3) “Stored Value” has the same meaning as set forth in subdivision (v) of Section 2003.

(b) There is in the state government, in the Business, Consumer Services, and Housing Agency, a Department of Business Oversight, which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission or such business; (5) issuers of stored value or such business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business; (8) insurance premium finance agencies or the insurance premium finance business; (9) persons offering or making any contract constituting bucketing; (10) persons offering or selling off-exchange commodities; (11) deferred deposit originators; (12) finance lenders and brokers; (13) residential mortgage lenders and servicers; (14) capital access companies; (15) check sellers, bill payers, and proraters; (16) securities issuers, broker-dealers, agents, investment advisers, and investment adviser representatives; (17) mortgage loan originators employed or supervised by finance lenders or residential mortgage lenders; (18) escrow agents; (19) franchisors; or (20) persons holding securities as custodians on behalf of securities owners.

SEC. 9. Section 459 of the Financial Code is amended to read:

459. (a) Every licensee shall file with the commissioner one copy of all material filed by the licensee with a federal agency that is charged with the supervision and regulation of that licensee, or a law enforcement agency.

(b) Each copy required to be filed pursuant to subdivision (a) shall be filed with the commissioner on or before the date upon which the original

is filed with the agencies specified in subdivision (a) and shall be available for inspection by the public except to the extent the information contained therein is accorded confidential treatment under state or federal law or regulations.

SEC. 10. Section 1001 is added to the Financial Code, to read:

1001. This division is known, and may be cited, as the “Banking Law.”

SEC. 11. Section 4000 of the Financial Code is amended to read:

4000. (a) For purposes of this division, the following terms have the following meanings:

(1) “Charge cardholder” and “charge card issuer” have the meaning defined in Section 1748.21 of the Civil Code and “charge card” means those cards defined in subdivision (a) of Section 1748.21 of the Civil Code and upon which the full balance is due and payable in each billing cycle.

(2) “Consumer” means a natural person.

(3) “Consumer credit agreement” means any written instrument providing for an extension of unsecured open-end credit for personal, family, or household purposes, that governs the relationship between a supervised financial organization and one or more consumers.

(4) “Charge card agreement” means the written instrument that creates and governs the relationship between a charge card issuer and one or more consumers.

(5) “Minimum payment” means that amount of money recited on a billing statement for an open-end credit account that must be received by the supervised financial institution by a specified due date.

(6) “Open-end credit” has the meaning set forth in Section 1026.2(a)(20) of Regulation Z.

(7) “Regulation Z” means any rule, regulation, or interpretation promulgated by the Consumer Financial Protection Bureau under the federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the director of the bureau under the Truth in Lending Act, as amended, to issue interpretations or approvals.

(8) “Security interest” has the meaning set forth in Section 1026.2(a)(25) of Regulation Z.

(9) “Supervised financial organization” means a state or federally regulated bank, savings association, savings bank, or credit union, or a subsidiary of any of the above.

(10) “Unsecured” means that the supervised financial organization is not granted a security interest in personal or real property under the consumer credit agreement.

(b) Notwithstanding any other provisions of law, the definitions contained in this section shall control transactions governed by this division.

SEC. 12. Section 4970 of the Financial Code is amended to read:

4970. For purposes of this division:

(a) “Annual percentage rate” means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending

Act and the regulations adopted thereunder by the Consumer Financial Protection Bureau.

(b) “Covered loan” means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust, and where one of the following conditions are met:

(1) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

(c) “Points and fees” shall include the following:

(1) All items required to be disclosed as finance charges under Sections 1026.4(a) and 1026.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

(2) All compensation and fees paid to mortgage brokers in connection with the loan transaction.

(3) All items listed in Section 1026.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

(d) “Consumer loan” means a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. “Consumer loan” does not include a reverse mortgage, an open line of credit as defined in Part 1026 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. “Consumer loan” does not include a bridge loan. For purposes of this division, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer’s principal dwelling.

(e) “Original principal balance” means the total initial amount the consumer is obligated to repay on the loan.

(f) “Licensing agency” shall mean the Bureau of Real Estate for licensed real estate brokers, the Department of Business Oversight for licensed residential mortgage lenders, licensed finance lenders and brokers, and the commercial and industrial banks and savings associations and credit unions organized in this state.

(g) “Licensed person” means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California

Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1.1 (commencing with Section 1000)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). This division shall not be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. This division shall not be construed to prevent the Bureau of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

(h) “Originate” means to arrange, negotiate, or make a consumer loan.

(i) “Servicer” has the same meaning provided in Section 6 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

SEC. 13. Section 4973 of the Financial Code is amended to read:

4973. The following are prohibited acts and limitations for covered loans:

(a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months’ advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

(D) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(b) (1) A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that

when aggregated do not fully amortize the principal balance as of the maturity date of the loan.

(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan" means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.

(c) A covered loan shall not contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the person who originates the loan discloses to the consumer that the loan contains a negative amortization provision that may add principal to the balance of the loan.

(d) A covered loan shall not include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

(e) A covered loan shall not contain a provision that increases the interest rate as a result of a default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan.

(j) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points.

(k) (1) A covered loan shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the consumer no later than three business days prior to signing of the loan documents of the transaction:

CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer's application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.7 (commencing with Section 4970) of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-995-HOPE (4673) or go to www.hud.gov/offices/hsg/hcc/fc/ for a list of HUD-approved housing counseling agencies.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application.

If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(2) It shall be a rebuttable presumption that a licensed person has met its obligation to provide this disclosure if the consumer provides the licensed person with a signed acknowledgment of receipt of a copy of the notice set forth in paragraph (1).

(l) (1) A person who originates a covered loan shall not steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on that person's then current underwriting guidelines, prudently applied,

considering the information available to that person, including the information provided by the consumer.

A person shall not be deemed to have violated this section if the risk grade determination applied to a consumer is reasonably based on the person's underwriting guidelines if it is an appropriate risk grade category for which the consumer qualifies with the person.

(2) If a broker originates a covered loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.

(m) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when the loan would have been a covered loan if the loan had been structured as a closed end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this division.

(n) A person who originates a covered loan shall not act in any manner, whether specifically prohibited by this section or of a different character, that constitutes fraud.

SEC. 14. Section 4995 of the Financial Code is amended to read:

4995. The following definitions shall apply for purposes of this division:

(a) "Higher-priced mortgage loan" has the meaning set forth in Section 1026.35 of Title 12 of the Code of Federal Regulations.

(b) "Licensed person" means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1.1 (commencing with Section 1000)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)).

(c) "Mortgage broker" means a licensed person who provides mortgage brokerage services. For purposes of this division, a licensed person who makes home loans is a "mortgage broker," and subject to the requirements of this division applicable to mortgage brokers, only with respect to transactions in which the licensed person provides mortgage brokerage services.

(d) "Mortgage brokerage services" means arranging or attempting to arrange, as exclusive agent for the borrower or as dual agent for the borrower and lender, for compensation or in expectation of compensation, paid directly or indirectly, a higher-priced mortgage loan made by an unaffiliated third party.

SEC. 15. Section 14254.5 of the Financial Code is amended to read:

14254.5. (a) Except as provided in subdivisions (b) and (c), within 10 business days of opening, closing, or relocating a branch office, a credit union shall notify the commissioner in writing of the action, including the street and mailing addresses of the branch office.

(b) A credit union shall not establish a branch office in another state of the United States without the approval of the governmental authority with jurisdiction to license or charter credit unions in that state. "State" has the meaning set forth in Section 207.

(c) A credit union shall not establish a branch office in a foreign nation without the prior written approval of the commissioner. "Foreign nation" has the meaning set forth in Section 175.

SEC. 16. Section 14256 of the Financial Code is amended to read:

14256. (a) If any credit union fails to file with the commissioner any report required by this division on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the failure is grounds for the suspension or revocation of the certificate authorizing the credit union to act as a credit union.

(b) If any credit union fails to file with the commissioner any report required by this division or by any order or regulation of the commissioner, on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the commissioner may order the credit union to pay to the commissioner a civil penalty imposed pursuant to Section 329.

SEC. 17. Section 14356 of the Financial Code is amended to read:

14356. All expenses of the department in administering this division and other laws relating to credit unions or the credit union business shall be paid out of the Credit Union Fund; and, except as otherwise provided in Section 413 or 414, the Credit Union Fund shall be used only for such purposes.

SEC. 18. Section 22332 of the Financial Code is amended to read:

22332. No licensee shall take any note or promise to pay that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Consumer Financial Protection Bureau.

SEC. 19. Section 22337 of the Financial Code is amended to read:

22337. Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant

to Regulation Z promulgated by the Consumer Financial Protection Bureau (12 C.F.R. 1026).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of three years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel or plainly mark “paid” and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, or an optical image reproduction thereof, except those documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee, or original documents otherwise required by law. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Sections 9512 and 9513 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9501 of the Commercial Code.

For purposes of this subdivision, an optical image reproduction shall meet all of the following requirements:

(1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, trust deed, mortgage, security agreement,

assignment or order shall be stamped or printed on the optical image reproduction.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

SEC. 20. Section 22340.1 of the Financial Code is amended to read:

22340.1. (a) A licensee that is a finance lender may sell to (1) an institutional lender, or (2) an institutional investor described in paragraph (6) of subdivision (b) of Section 22340, promissory notes evidencing the obligation to repay federally related mortgage loans, as defined in Section 1024.2 of Title 12 of the Code of Federal Regulations, purchased from and made by an institutional lender, and may make agreements for the collection of payments and performance of services with respect to those notes. For purposes of this section, “institutional lender” means any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company or residential mortgage lender doing business under the authority of and in accordance with a license, certificate or charter issued by the United States or this state.

(b) In the absence of agreement to the contrary by the licensee and the institutional investor or institutional lender, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

SEC. 21. Section 30005 of the Financial Code is amended to read:

30005. This division does not apply to:

(a) A securities depository which is operated by a corporation, all of the capital stock (other than directors’ qualifying shares, if any) of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, or by a corporation all of the capital stock (other than directors’ qualifying shares, if any) of which is held by or for such a wholly owned subsidiary of a registered national securities exchange.

(b) A securities depository which is registered with the Securities and Exchange Commission pursuant to any provision of federal law or which is regulated by the Comptroller of the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation pursuant to any provision of federal law, or which is regulated by the Commissioner of Business Oversight under Division 1.1 (commencing with Section 1000) of the Financial Code.

SEC. 22. Section 50003 of the Financial Code is amended to read:

50003. (a) “Annual audit” means a certified audit of the licensee’s books, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

(b) “Borrower” means the loan applicant.

(c) “Buy” includes exchange, offer to buy, or solicitation to buy.

(d) “Commissioner” means the Commissioner of Business Oversight.

(e) “Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(g) “Engage in the business” means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. “Engage in the business” also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(h) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(i) “In this state” includes any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

(j) “Institutional investor” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or in accordance with a license,

certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation or other entity with outstanding securities registered under Section 12 of the federal Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation or entity, provided that the purchaser represents either of the following:

(A) That it is purchasing for its own account for investment and not with a view to, or for sale in connection with, any distribution of a promissory note.

(B) That it is purchasing for resale pursuant to an exemption under Rule 144A (17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940; or a wholly owned and controlled subsidiary of that company, provided that the purchaser makes either of the representations provided in paragraph (4).

(6) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person is acting within the scope of authority granted by that license or an affiliate or subsidiary controlled by that broker or dealer, in connection with a transaction involving the offer, sale, purchase, or exchange of one or more promissory notes secured directly or indirectly by liens on real property or a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, and the offer and sale of those securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(8) A licensed real estate broker selling the loan to an institutional investor specified in paragraphs (1) to (7), inclusive, or paragraph (9) or (10).

(9) A business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 or a small business investment company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

(10) A syndication or other combination of any of the foregoing entities that is organized to purchase a promissory note.

(11) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of securities representing undivided interests in, or rights to receive payments from or to receive payments primarily from, a pool of financial assets held by the trust or business entity, provided that all of the following apply:

(A) The business entity is not a sole proprietorship.

- (B) The pool of assets consists of one or more of the following:
 - (i) Interest-bearing obligations.
 - (ii) Other contractual obligations representing the right to receive payments from the assets.
 - (iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancement for the assets.
- (C) The securities will be either one of the following:
 - (i) Rated as “investment grade” by Standard and Poor’s Corporation or Moody’s Investors Service, Inc. “Investment grade” means that the securities will be rated by Standard and Poor’s Corporation as AAA, AA, A, or BBB or by Moody’s Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings with “+” or “—” designation or other variations that occur within those ratings.
 - (ii) Sold to an institutional investor.
- (D) The offer and sale of the securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.
- (k) “Institutional lender” means the following:
 - (1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
 - (2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.
 - (3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.
 - (4) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law.
- (l) “Law” means the California Residential Mortgage Lending Act.
- (m) “Lender” means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.
- (n) “Licensee” means, depending on the context, a person licensed under Chapter 2 (commencing with Section 50120), Chapter 3 (commencing with Section 50130), or Chapter 3.5 (commencing with Section 50140).

(o) “Makes or making residential mortgage loans” or “mortgage lending” means processing, underwriting, or as a lender using or advancing one’s own funds, or making a commitment to advance one’s own funds, to a loan applicant for a residential mortgage loan.

(p) “Mortgage loan,” “residential mortgage loan,” or “home mortgage loan” means a federally related mortgage loan as defined in Section 1024.2 of Title 12 of the Code of Federal Regulations, or a loan made to finance construction of a one-to-four family dwelling.

(q) “Mortgage servicer” or “residential mortgage loan servicer” means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.

(r) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(s) “Net worth” has the meaning set forth in Section 50201.

(t) “Own funds” means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender’s financial statements, whether secured or unsecured, or (2) a lender’s affiliate’s cash, corporate capital, or warehouse credit lines at commercial banks or other sources that are liability items on the affiliate’s financial statements, whether secured or unsecured. “Own funds” does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of that loan.

(u) “Person” means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated organization, a joint stock company, a government or a political subdivision of a government, and any other entity.

(v) “Residential real property” or “residential real estate” means real property located in this state that is improved by a one-to-four family dwelling.

(w) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(x) “Service” or “servicing” means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

(y) “Sell” includes exchange, offer to sell, or solicitation to sell.

(z) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(aa) For purposes of Sections 50142, 50143, and 50145, “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(ab) For purposes of Section 50141, “expungement” means the subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such individual to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information, or indictment. With respect to criminal convictions in another state, that state’s definition of expungement will apply.

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